

February 15, 2019

Sabrina Burroughs  
FOIA Officer  
Mail Stop 1181  
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90 K Street, N.W.  
Washington, D.C. 20229-1181  
Tel: (202) 325-0150

Re: Freedom of Information Act Request

Dear Ms. Burroughs:

Pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, we hereby request that your office produce the following records within 20 business days:

1. Any records of any communications, including but not limited to e-mails, meetings, memoranda, and telephone calls, discussing or relaying statistics regarding the following with personnel in the Executive Office of the President:
  - The level of unauthorized border crossings at the U.S.-Mexico border;
  - Crime rates among undocumented immigrants in the United States compared to native-born Americans;
  - The proportion of the U.S. federal prison population that are undocumented Immigrants;
  - Rates of violent crimes and other violent activity at the U.S.-Mexico border;
  - The proportion of illegal drugs that enter the United States at ports of entry versus not at ports of entry;
  - The amount of money the United States spends to address illegal immigration; and
  - The economic cost to the United States of illegal immigration.

President Trump discussed the above statistics in remarks at the Rose Garden earlier this morning, and indicated that he received at least some from the Department of Homeland Security. This request covers records for the period from January 20, 2017, to the present.

We also request any records describing the processing of this request, including records sufficient to identify search terms used and locations and custodians searched and any tracking sheets used to track the processing of this request. If your agency uses FOIA questionnaires or certifications completed by individual custodians or components to determine whether they

possess responsive materials or to describe how they conducted searches, we also request any such records prepared in connection with the processing of this request.

If you make a determination that any responsive record, or any segment within a record, is exempt from disclosure, we ask that you provide an index of those records at the time you transmit all other responsive records. In the index, please include a description of the record and the reason for exclusion with respect to each individual exempt record or exempt portion of a record, as provided by *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974). When you deem a portion of a record exempt, we ask that the remainder of the record to be provided, as required by 5 U.S.C. §§ 552(a)(8)(A)(ii) & 552(b).

#### **FEE WAIVER**

FOIA provides that any fees associated with a request are waived if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

We are the editor-in-chief and senior editor for Lawfare, an online publication dedicated to informing public understanding on operations and activities of the government. Lawfare is published by The Lawfare Institute, a 501(c)(3) not-for-profit educational organization, and in cooperation with The Brookings Institution, a 501(c)(3) nonprofit public policy organization. This request is submitted in connection with Lawfare’s mission to publish information that is likely to contribute significantly to the public understanding of federal agency activities related to law and national security. Lawfare does not have commercial interests. This request is submitted in connection with Lawfare’s mission to publish information that is likely to contribute significantly to the public understanding of executive branch activities relating to law and national security, as the president cited the statistics in question to support his proposed construction of a wall along the U.S.-Mexico border using various military and law enforcement-related legal authorities.

In addition to satisfying the requirements for a waiver of fees associated with the search and processing of records, we are entitled to a waiver of all fees except “reasonable standard charges for document duplication.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). Federal law mandates that fees be limited to document duplication costs for any requester that qualifies as “a representative of the news media.” *Id.* Lawfare is a “news media organization[]” that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.” *Nat'l Sec. Archive v. Dep't of Defense*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). We intend to give the public access to documents

transmitted via FOIA on our website, <https://www.lawfareblog.com>, and to provide information about and analysis of those documents as appropriate.

### **EXPEDITED PROCESSING**

FOIA requires provides for expedited processing where a requestor “demonstrates a compelling need.” 5 U.S.C. § 552(a)(6)(E)(i). It defines “compelling need” to include situations where a “request [is] made by a person primarily engaged in disseminating information” and there exists an “urgency to inform the public concerning actual or alleged Federal Government activity.” Id. § 552(a)(6)(E)(v).

Lawfare is an organization primarily engaged in the dissemination of information. This request addresses statistics that the president cited in support of his proposal to build a wall along the U.S.-Mexico border using various law enforcement and military-related legal authorities. He attributed those statistics to the Department of Homeland Security to provide support for their credibility. Clarifying the actual information provided to the president by the Department of Homeland Security is necessary for the public to evaluate the president’s policy proposal. Moreover, this need is urgent as this policy is set to begin implementation imminently.

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Given the 20-day statutory deadline, we hope to be as helpful as possible in clarifying or answering questions about our request. Please contact us by phone or email if you require any additional information. We appreciate your cooperation, and look forward to hearing from you very soon.

Sincerely,

/s/ Benjamin Wittes

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